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No. 00-1211

Supreme Court, U.S.
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CLERK

In The

Supreme Court of the United States

CHRISTOPHER R. WOJCIECHOWSKI,

Petitioner,

v.

WALT DISNEY CONCERT HALL NO. 1, et al.,

Respondents.

On Petition For Writ Of Certiorari To The U.S. Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO THE SUPPLEMENTAL BRIEF FOR RESPONDENTS WALT DISNEY CONCERT HALL NO. 1, WALT DISNEY CONCERT HALL NO. 2, U.S. TRUST COMPANY, N.A. (as Co-Executor of the Estate of Sharon D. Lund), RONALD E. GOTHER (as Co-Executor of the Estate of Sharon D. Lund), HARRY HUFFORD, CANYON OAKS ESTATES L.P., TOPANGA OAKS, INC., ROBERT L. WILSON (an individual), U.S. TRUST COMPANY, N.A., JOHN C. WESTWATER, RETLAW ENTERPRISES, INC., DIANE DISNEY MILLER (an individual), DIANE DISNEY MILLER (as Co-Executor of the Estate of Sharon D. Lund), GIBSON, DUNN & CRUTCHER, RONALD E. GOTHER (individually), JANE LINDSAY WINGFIELD, BENNETT L. SILVERMAN, CHARLES S. BATTLES, JR., and LAUREL BALLARD

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QUESTION PRESENTED

Where a petitioner files a petition for writ of certiorari, then four months later files a supplemental brief under Supreme Court Rule 15.8 seeking to add 32 new respondents and two subsequent appellate court decisions for review, should the Court deny petitioner's request to add these new respondents and subsequent decisions to the original petition proceedings?

LIST OF PARTIES TO THE PROCEEDINGS BELOW

Matter No. 1. In the September 25, 2000 Petition for Writ of Certiorari ("Petition"), petitioner Christopher R. Wojciechowski ("CRW") seeks review of the Ninth Circuit's May 3, 2000 decision and June 28, 2000 order denying rehearing in the matter *Christopher R. Wojciechowski v. Latham & Watkins, William J. Meeske, John P. (Jack) Walker, and Vince Herron*, case No. 99-15702. [Petition, Appendix at 33, 35] The parties to that proceeding are: appellant Christopher R. Wojciechowski; and appellees Latham & Watkins, William J. Meeske, John P. (Jack) Walker, and Vince Herron (the "Latham Defendants").

In the February 5, 2001 Supplement to Petition for Writ of Certiorari ("Supplement"), CRW seeks review of two additional Ninth Circuit decisions.

Matter No. 2. The Supplement seeks review of a December 14, 2000 memorandum decision and January 19, 2001 order denying rehearing in the matter *Christopher R. Wojciechowski v. Walt Disney Concert Hall No. 1, et al.*, case No. 00-15135. [Supplement, Appendix at 7, 8] The parties to that proceeding are: appellant Christopher R. Wojciechowski; and appellees Walt Disney Concert Hall No. 1, Walt Disney Concert Hall No. 2, U.S. Trust Company, N.A. (as Co-Executor of the Estate of Sharon D. Lund), Ronald E. Gother (as Co-Executor of the Estate of Sharon D. Lund), Harry Hufford, Canyon Oaks Estates L.P., Topanga Oaks, Inc., Robert L. Wilson (an individual), U.S. Trust Company, N.A., John C. Westwater, Retlaw Enterprises, Inc., Diane Disney Miller (an individual), Diane Disney Miller (as co-executor of the Estate of Sharon D. Lund), Gibson, Dunn & Crutcher, Ronald E.

LIST OF PARTIES TO THE PROCEEDINGS BELOW – Continued

Gother (individually), Jane Lindsay Wingfield, Bennett L. Silverman, Charles S. Battles, Jr., Laurel Ballard, County of Los Angeles, John P. Shook, Edmund D. Edelman, Larry J. Monteilh, Harry J. Kim, Finer, Kim & Stearns, Harris & Ruble, Shelly B. Thompson (as Co-Trustee of the Lillian B. Disney Trust), U.S. Trust Company, N.A. (as Co-Trustee of the Lillian B. Disney Trust), U.S. Trust Company, N.A. (as Co-Trustee of the Lilliam B. Disney Trust), Robert L. Wilson (as Co-Trustee of the Lillian B. Disney Trust), Robert L. Wilson (as Co-Executor of the Will of Lillian B. Disney), and U.S. Trust Company, N.A. (as Co-Executor of the Will of Lillian B. Disney).

Matter No. 3. The Supplement also seeks review of the Ninth Circuit's November 8, 2000 decision in the matter *Christopher R. Wojciechowski v. United States District Court for the Northern District of California (San Jose)*, case No. 00-70779. [Supplement, Appendix at 11] The parties to that proceeding are: petitioner Christopher R. Wojciechowski; respondent U.S. District Court for the Northern District of California; and real parties in interest Hon. Ronald M. Whyte, Montevideo Partnership, Canyon Oaks Estates L.P., Diane D. Miller (an individual), Diane D. Miller (as Co-Executor of the Estate of Sharon D. Lund), Arthur B. Cook, Hill, Farrer & Burrill, Latham & Watkins, John P. Walter, Brad Godshall, Chris Carlton, Vincent Herron, William J. Meeske, Harry Hufford, Walt Disney Concert Hall No. 1, Walt Disney Concert Hall No. 2, Topanga Oaks, Inc., Robert L. Wilson, U.S. Trust Co., N.A. (as Co-Executor of the Estate of Sharon D. Lund), John C. Westwater, U.S. Trust Co., N.A., Ronald E. Gother

LIST OF PARTIES TO THE PROCEEDINGS BELOW – Continued

(an individual), Ronald E. Gother (as Co-Executor of the Estate of Sharon D. Lund), Charles S. Battles, Jr., Bennett L. Silverman, Jane Lindsay Wingfield, Retlaw Enterprises, Inc., Gibson, Dunn & Crutcher, Edmund D. Edelman, County of Los Angeles, Michael D. Antonovich, The Lund Family Trust, Trustees of The Lillian B. Disney Trust, Shelly B. Thompson (as Co-Trustee), U.S. Trust Co., N.A. (as Co-Trustee), Robert L. Wilson (as Co-Trustee), Executors of The Will of Lillian B. Disney, Robert L. Wilson (as Co-Executor), U.S. Trust Co., N.A. (as Co-Executor), Harry J. Kim, and Finer, Kim & Stearns.

Corporate disclosure statement

Pursuant to Rule 29.6,[1] respondents Retlaw Enterprises, Inc. and Topanga Oaks, Inc. state that they have no parent companies. Respondent U.S. Trust Company, N.A. states that it is a wholly owned subsidiary of U.S. Trust Corporation, which is a wholly owned subsidiary of The Charles Schwab Corporation.

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[1] All Rule references are to the Supreme Court Rules, unless otherwise indicated.

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OPINIONS BELOW

Matter No. 1. In the September 25, 2000 Petition, CRW seeks review of the Ninth Circuit's May 3, 2000 memorandum decision affirming summary judgment, and a June 28, 2000 order denying rehearing. The Ninth Circuit case is entitled *Christopher R. Wojciechowski v. Latham & Watkins, William J. Meeske, John P. (Jack) Walker, and Vince Herron,* case No. 99-15702, on an appeal from the grant of summary judgment in favor of the Latham Defendants in district court case No. CV-98-21139 (the "RICO Action").[2] [Petition, Appendix at 33, 35]

CRW's Supplement now asks this Court to review two additional Ninth Circuit decisions.

Matter No. 2. The Supplement seeks review of *Christopher R. Wojciechowski v. Walt Disney Concert Hall No. 1, et al.,* Ninth Circuit case No. 00-15135, on appeal from the district court's order dismissing the RICO Action against the remaining 32 defendants. In a December 14, 2000 memorandum decision, the Ninth Circuit dismissed the appeal as untimely, and affirmed the district court's denial of a motion for reconsideration. [Supplement, Appendix at 8] The Ninth Circuit denied rehearing on January 19, 2001. [Supplement, Appendix at 7]

Matter No. 3. In addition, CRW's Supplement seeks review of *Christopher R. Wojciechowski v. United States District Court for the Northern District of California (San Jose),* Ninth Circuit case No. 00-70779, on appeal from the

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[2] Respondents are not parties to the May 3, 2000 decision involved in Matter No. 1, and will not address the issues raised by the Petition. [Petition, Appendix at 33, 35]

district court's order of dismissal in case No. CV-99-21236 (the "Civil Rights Action"), a different district court action than that appealed from in Matters Nos. 1 and 2, above. [Supplement, Appendix at 11] The Ninth Circuit denied CRW's petition for writ of mandate.

JURISDICTION

In Matter No. 1, the Ninth Circuit's memorandum decision was entered on May 3, 2000. [Petition, Appendix at 35] An order denying rehearing and rehearing en banc was entered on June 28, 2000. [Petition, Appendix at 33] CRW filed the Petition on September 25, 2000, invoking the jurisdiction of this Court under 28 U.S.C. § 1257.

CRW introduces Matters Nos. 2 and 3 in the Supplement, but cites no authority conferring jurisdiction on this Court to review those additional decisions in this proceeding. CRW filed the Supplement under Rule 15.8, which authorizes a party to file a supplemental brief "calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing." Rule 15.8 does not authorize adding new parties or subsequent decisions for review.

STATUTES OR OTHER PROVISIONS INVOLVED

The main provision raised by the Supplement is Rule 15.8, which provides:

> "Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

STATEMENT OF THE CASE

CRW has filed a series of cases – including four actions in the U.S. District Court, Northern District of California – arising out of his dissatisfaction with his 1992 settlement of claims in the bankruptcy of Montevideo Partnership, a real estate project in the Santa Monica Mountains which he had unsuccessfully promoted. The Supplement relates to two of these district court actions: Matter No. 2 involves the RICO Action; and Matter No. 3 deals with the Civil Rights Action.

CRW filed the RICO Action on November 16, 1998. The district court granted summary judgment in favor of

the Latham Defendants, finding that CRW had previously released them. That decision, and the Ninth Circuit's affirmance thereof, is the subject of CRW's original petition herein (Matter No. 1).

At the same time, the district court dismissed the complaint under FRCP 8 and 10 with leave to amend. CRW then filed a first amended complaint, which the district court dismissed without leave to amend under FRCP 8(a), 10(b) and 41(b). The district court entered judgment on August 31, 1999. CRW filed a notice of appeal. The Ninth Circuit issued a December 14, 2000 Memorandum decision dismissing the appeal for untimeliness and other reasons, and affirming the District Court's order denying CRW's motion for reconsideration. [Supplement, Appendix at 8] CRW's Supplement seeks review of that decision (Matter No. 2).

On December 22, 1999, CRW filed the Civil Rights Action. The district court entered judgement against CRW on April 26, 2000. CRW filed a petition for writ of mandate in the Ninth Circuit, which the Ninth Circuit denied on August 14, 2000. On November 8, 2000, the Ninth Circuit denied CRW's petition for rehearing en banc. [Supplement, Appendix at 8] CRW's Supplement also seeks review of that decision (Matter No. 3), which is an appeal from a different trial court action than Matters Nos. 1 and 2.

By filing the Supplement, CRW seeks to add 32 new respondents and two appellate court decisions to the matter raised in the original Petition proceedings.

REASONS FOR DENYING THE WRIT

CRW filed a supplemental brief which he would like considered in addition to the original Petition in this matter. The Supplement does not add new decisional or legislative authority, or any other intervening matter that is germane to the issues raised in the Petition, namely Matter No. 1. Instead, the Supplement raises additional issues, adds new parties and seeks review of additional decisions that should be the subject of separate proceedings, if at all.

The two decisions raised in the Supplement were correctly decided by the courts below. In Matter No. 2, the Ninth Circuit dismissed CRW's appeal in the RICO Action as untimely, and affirmed the district court's denial of a motion for reconsideration. [Supplement, Appendix at 8] In matter No. 3, the Ninth Circuit denied CRW's petition for writ of mandate and petition for rehearing en banc as to the district court's order of dismissal in the Civil Rights Action. [Supplement, Appendix at 11] There is no conflict or any other basis for further review by this Court.

I. There is no compelling reason for this Court to grant a writ of certiorari.

CRW's Supplement provides no compelling reason for this Court to grant a writ of certiorari. Rule 10 provides that a petition for a writ of certiorari will be granted "only for compelling reasons." Rule 10 provides examples of the reasons the Court considers, such as conflicting decision among the circuits.

Here, the decisions in Matters Nos. 2 and 3 do not conflict with the decisions of another U.S. court of appeals, do not conflict with a decision by a state court of last resort, and do not depart from the accepted and usual course of judicial proceedings as to require this Court's supervisory power.

The Ninth Circuit decisions below do not raise any federal question on an important question of federal law that has not been, or should be, settled by this Court. Nor do the Ninth Circuit decisions below conflict with relevant decisions of this Court. The only issues involved in Matters Nos. 2 and 3 concern CRW's dissatisfaction with the Ninth Circuit's factual findings in its decisions against him.

Simply put, there is no compelling reason for this Court to grant a writ of certiorari.

II. By serving the Supplement four months after the Petition was filed, CRW has deprived Respondents of procedural due process.

CRW introduces Matters Nos. 2 and 3 in the Supplement, but cites no authority conferring jurisdiction on this Court to review those additional decisions in this proceeding. CRW filed the Supplement under Rule 15.8, which authorizes a party to file a supplemental brief "calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing." But Rule 15.8 does not authorize adding new parties or subsequent decisions for review.

By using the Supplement to add 32 new parties and seek this Court's review of two additional decisions, CRW attempts an end run around the procedural due process requirements normally afforded to a respondent. By filing the Supplement seeking to add Matters 2 and 3, CRW has made this proceeding needlessly complicated. Aside from having a mere three weeks to oppose the Supplement, Respondents have been forced to respond to the Supplement amid the framework of the Petition, which has a separate appellate history to which Respondents were not parties. If CRW wanted this Court's review of Matters Nos. 2 and 3, he should have filed separate proceedings and followed the proper procedures set forth in Rules 10 through 16.

CRW's failure to comply with procedural due process requirements are sufficient grounds to warrant this Court's denial of the relief requested in the Supplement.

III. Because the Supplement contains misstatements of fact, the relief sought should be denied under Rule 14.4.

CRW's Supplement is replete with inaccuracies which, under Rule 14.4, is sufficient reason for denying the Supplement. Rule 14.4 provides:

> "The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition."

It has long been held that a petition to this Court for a writ of certiorari should make a clear, definite and

complete disclosure concerning the controversy, since it is impossible for the Court critically to examine the record before ruling on the application, and it "must rely very largely upon preliminary papers." *Southern Power Co. v. North Carolina Public Service Co.*, 44 S.Ct. 164, 263 U.S. 508, 509, 68 L.Ed. 413, 414 (1924).

The Supplement contains numerous inaccuracies, as follows:

Misstatements of fact or law in the Supplement

1. "The Charles Schwab Corp, by way of it's recent acquisition of U.S. Trust Co. N.A. has assumed legal and financial responsibility for U.S. Trust Co., in it's various capacities, shown above."[3] [Supplement at ii, fn. 1]

2. "The federal questions of Civil Rights abuses & RICO violations are sufficient to sustain this Court's Jurisdiction. . . . " [Supplement at vii]

3. "Petitioner has been deprived of equal protection by Coconspirator's . . . of his absolute right to overturn L&W's and other Coconspirator's, asserted Bankruptcy Fraud. . . . " [Supplement at vii]

4. "Coconspirators, aided and abetted by L.A. County's state courts, covered up the true facts and deprived Petitioner of his federal rights to recover what

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[3] The Charles Schwab Corporation is not a party to these actions. It acquired the ***stock*** of U.S. Trust. A corporate entity does not assume the rights, duties and benefits of another entity which it acquires in a stock purchase. *Berclain America Latina v. Baan Co.*, 74 Cal.App.4th 401, 407 (1999) ("The two entities are assumed to remain separate absent circumstances justifying their treatment as a single entity.")

L&W and the other Coconspirators shown in this Supplement, unlawfully took from him, without just and equitable compensation. . . . " [Supplement at vii]

5. "The diffrence [sic] between the amount he was paid and the amount he was deprived of is $156 million, or 99% of what was his net worth." [Supplement at vii]

6. "On JAN 19, 2001, the other part of this dismissed case, ***the bifurcated part***. . . . "[4] [Supplement at 3] (Emphasis added.)

7. "Judicial economy in this Court shall be served. ***The issues are the same.***" [Supplement at 4] (Emphasis added.)

8. "Defendant's/Conspirators; Walt Disney Concert Hall No. 1, Walt Disney Concert Hall No. 2 . . . Harry Hufford . . . were and still are all in Default. . . . " [Supplement at 4] (Punctuation errors in original.)

9. "Recovery of *significant property* totaling $156 million, which was unlawfully taken from him, must take precedent." [Supplement at 4] (Emphasis original.)

10. "Coconspirators, in what was a stereotype 'Mafia' like take over of Petitioners business, violated Title 42 USC Sec'st. 1983, 1985, 1986 combined with Title 18 USC Sect's. 1503; 1510; 1511; 1512; 1513; 1951; 1952." [Supplement at 4] (Punctuation errors in original.)

11. "The relief sought, in money damages suffered by Petitioner, is the responsibility of all Coconspirators." [Supplement at 4]

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[4] The district court did not bifurcate the RICO Action.

12. "In the rightful presiding Judge's Court. Which is the Court of the Hon. Jeremy Fogel. . . . " [Supplement at 5]

13. "On NOV 8, 2000 yet, another part of this dismissed case, the third part, ***in the same DC Case No. CV 98-21139 RMW,*** on Appeal at the 9th Cir. as Docket Docket [sic] No. 00-70779, was denied."[5] [Supplement at 5] (Emphasis added.)

Among the most egregious misstatements, is the statement that Matter No. 3 is from the ***same case*** as Matters Nos. 1 and 2. [Supplement at 5, ¶ 2] Matters Nos. 1 and 2 involve two Ninth Circuit decisions in separate appeals in the RICO Action, district court case No. ***98-21139.*** [Petition, Appendix at 35; Supplement, Appendix at 8] Matter No. 3 involves a November 8, 2000 Ninth Circuit decision in the Civil Rights Case, district court case No. ***99-21236.*** [Supplement, Appendix at 11]

The district court found the two actions to be related, but they are not the same action. CRW filed them as separate actions when it served his purposes to do so. He now seeks to pretend they are the same action, when his purpose dictates otherwise.

The Supplement also inaccurately states that various defendants, including some Respondents here, "were and still are in default." [Supplement at 4] The district court did not enter default against these defendants. Rather, the

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[5] The November 8, 2000 order is from an appeal in a ***different*** case – the Civil Rights Action – district court case No. CV 99-21236. [Supplement, Appendix at 11]

district court dismissed these Respondents with prejudice, and the appellate court dismissed CRW's appeal in part and affirmed in part. [Supplement at 8]

As shown in the above Misstatements of Fact or Law required by Rule 15.2, CRW's Supplement is replete with inaccuracies which, under Rule 14.4, is sufficient reason for denying the Supplement.

CONCLUSION

There is no compelling reason for this Court to consider Matters Nos. 2 and 3. The Court should not grant a writ of certiorari.

Respectfully submitted,

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HILL, FARRER & BURRILL LLP
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DATED: February 28, 2001